

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matters of:

5 RESIDENTIAL CAPITAL, LLC, et al., Case No. 12-12020-mg

6 Debtors.

7 - - - - -x

8 HAWTHORNE,

9 Plaintiff, Case No. 12-02050-mg

10 - against -

11 GMAC MORTGAGE, LLC,

12 Defendant.

13 - - - - -x

14 VON BRINCKEN,

15 Plaintiff, Case No. 13-01436-mg

16 - against -

17 GMAC MORTGAGE, LLC, et al.,

18 Defendants.

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United States Bankruptcy Court

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One Bowling Green

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New York, New York

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April 24, 2014

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B E F O R E:

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HON. MARTIN GLENN

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U.S. BANKRUPTCY JUDGE

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(CC: Doc. nos. 6687 and 6688) Adj. Hrg. RE: Motion of the
ResCap Liquidating Trust for an Order Enforcing Plan Injunction
Against Karla Brown filed by Douglas Manna on behalf of ResCap
Liquidating Trust.

(CC: Doc# 6448) Adj. Hrg. RE: Motion for Omnibus Objection to
Claim(s) / ResCap Borrower Claims Trusts Fifty-Ninth Omnibus
Objection to Claims (Insufficient Documentation Borrower
Claims).

Hearing solely as to claim filed by Annie M. Trammell will be
going forward. Hearing, solely as to claim filed by Alredia
Holiday is not required as parties anticipate claimant's filing
of a Notice of Withdrawal of claim.

Adversary proceeding: 12-02050-mg Hawthorne v. GMAC MORTGAGE,
LLC

(CC: Doc no. 1) Adj. Status Conference

Adversary proceeding: 13-01436-mg Von Brincken v. GMAC
MORTGAGE, LLC, et al

(CC: Doc. no. 15) Adjourned Status Conference.

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1 P R O C E E D I N G S

2 THE COURT: Please be seated.

3 All right, we're here in Residential Capital, number
4 12-12020. Mr. Rosenbaum?

5 MR. ROSENBAUM: Good morning, Your Honor. Norm
6 Rosenbaum, Morrison & Foerster, for the ResCap Liquidating
7 Trust and the ResCap Borrowers' Trust.

8 Your Honor, the first matter is on page 6 of the
9 agenda. That's the motion of the ResCap Liquidating Trust for
10 an order enforcing the plan injunction.

11 THE COURT: Yes.

12 MR. ROSENBAUM: And I'll turn the podium over to Mr.
13 Mannal.

14 THE COURT: Okay.

15 MR. MANNAL: Your Honor, Doug Mannal from Kramer Levin
16 on behalf of the Liquidating Trust. Your Honor --

17 THE COURT: Let me get the other appearances in this.

18 MR. COLLIER: Your Honor, Paul Collier for the
19 claimant, Karla Brown, and Max Weinstein with me.

20 THE COURT: Thank you very much.

21 MR. MANNAL: Your Honor, we were prepared to go
22 forward today on the trust's motion, however, in an effort to
23 hopefully reach a settlement, not only of the claims that are
24 being asserted against Mr. Brown, but also the claims being
25 asserted against GMAC Mortgage, the parties have agreed to an

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1 adjournment, if Your Honor is so inclined, to the date of June
2 10th, which your chambers has informed us, is available. And
3 it's our hope that we make further progress in resolving all
4 the claims to avoid the need to proceed on the trust's motion.

5 (Pause)

6 THE COURT: Just bear with me a second, Mr. Mannal.

7 MR. MANNAL: Absolutely.

8 THE COURT: This will take more than a few seconds. I
9 guess the computer rebooted by itself overnight.

10 Let me ask you this. What is the status of the
11 Massachusetts action? Because I certainly read that there was
12 a motion for summary judgment that was argued, I think, in
13 January. And it's described in Mr. Weinstein's brief as fully
14 briefed and, I guess -- was it argued, Mr. Weinstein?

15 MR. WEINSTEIN: Yes, Your Honor, it was argued.

16 THE COURT: Okay. So what's the status of it?

17 MR. WEINSTEIN: It's presently under advisement. I
18 don't think the Massachusetts Superior Court judge intends to
19 act on it before resolution of this matter.

20 THE COURT: Okay. And that is -- you believe that
21 because why?

22 MR. WEINSTEIN: She said so.

23 THE COURT: Okay, well, that's a good reason.

24 MR. COLLIER: We also, Your Honor, just for the
25 Court's information --

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1 THE COURT: Go ahead -- you need to identify yourself
2 when you speak.

3 MR. COLLIER: I'm sorry. Paul Collier, Your Honor.

4 THE COURT: Okay, Mr. Collier, go ahead.

5 MR. COLLIER: We also have a trial date scheduled for
6 next -- but it's not until next March. So there's some --

7 THE COURT: You don't have a trial date.

8 MR. COLLIER: We don't have a trial date.

9 THE COURT: Nothing imminent. Let's put it that way.

10 MR. WEINSTEIN: Nothing imminent.

11 THE COURT: Okay. Because the -- I think -- look, I'm
12 always in favor of a consensual resolution of matters, and am
13 certainly aware that the claim against GMAC remains pending.
14 And what's it, a 700,000-dollar claim that was filed. Is that
15 it?

16 MR. MANNAL: I believe it was a 700,000-dollar claim
17 filed, yes.

18 THE COURT: My only concern -- I didn't want the judge
19 in Massachusetts -- I didn't know what the expectation was as
20 to whether the judge in Massachusetts was going to go ahead and
21 decide the matters that are pending before her or wait for this
22 Court to decide. It was un -- let's put it that way -- it was
23 unclear to me whether the issue of the effect of the release
24 and injunction provisions had been raised with and argued with
25 the judge in Massachusetts or what.

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1 MR. MANNAL: They have not, Your Honor.

2 THE COURT: Mr. Collier? Go ahead, Mr. Collier.

3 MR. COLLIER: Halfway in between, Judge, which is the
4 court's order and the plan were filed there. The court
5 instructed counsel for Mr. Brown to file a motion by May 10th
6 with regard to its effect. And then in the meantime, counsel
7 gave -- and then us to reply after that. And in the meantime,
8 counsel filed here for the motion for the order enforcing.

9 So the judge is awaiting --

10 THE COURT: Okay.

11 MR. COLLIER: -- the resolution of this issue here.

12 THE COURT: All right. Let me try and clear one thing
13 up that I guess seems evident to me. Karla Brown and Phillip
14 Brown are not related to each other. Is that right?

15 MR. COLLIER: That's right, Judge.

16 THE COURT: Okay. Just trying to keep straight at all
17 times the two --

18 MR. COLLIER: Not within any degree of separation that
19 we could identify biologically.

20 THE COURT: Okay, all right. I'm -- well, now my
21 computer is -- let me get my calendar.

22 (Pause)

23 THE COURT: All right. I see there is a ResCap
24 calendar on June 10th. At this point, at least, not very many
25 matters on it.

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1 Well, I'm prepared to adjourn this matter until June
2 10th to allow the parties an opportunity to see if they can
3 reach an overall global resolution that would resolve all
4 issues.

5 I would ask this, that a letter in an agreed form be
6 sent to the judge in Massachusetts, indicating that the Court
7 held a hearing today; at the request of the parties, the
8 hearing was adjourned until June 10th, and that the bankruptcy
9 court requested that the Massachusetts court withhold any
10 decision on the pending motion for summary judgment, pending a
11 resolution of the matters before this court. And it's just a
12 request, and the court there will do whatever it's going to do.

13 But I just want to be clear so that -- just agree.
14 It's a pretty straightforward letter. I'm sure you'll be able
15 to agree on that.

16 MR. WEINSTEIN: Absolutely, Your Honor.

17 THE COURT: Okay. All right, Mr. Mannal?

18 MR. MANNAL: Thank you, Your Honor. And we do
19 apologize to the Court for the late adjournment of this matter.

20 THE COURT: And the Court has done a lot of work on
21 this, let me put it that way. But I think that, in particular,
22 because there is the claim pending against GMAC-M as well, and
23 so there's more that's going to need to be done to resolve the
24 entire matter.

25 Mr. Collier and Mr. Weinstein, while there wasn't a

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1 reference to it in any of the briefing because it's late
2 developments, within the last week, the Court has issued
3 several opinions, one for publication, at least one not for
4 publication but available on the court's Web site, enforcing
5 the third-party nondebtor release included in the plan with
6 respect to Ally Financial.

7 MR. COLLIER: We've read them, Your Honor.

8 THE COURT: Okay. I just wanted to be sure that you
9 were aware. Because it wasn't -- the briefing was all in
10 before those opinions were issued. So --

11 MR. MANNAL: In fact, Your Honor, I was going to refer
12 to the Lahrman motion decision. I'd be happy to share a copy
13 with counsel.

14 THE COURT: That's fine. They're on the Web site.
15 But you ought to do that. Okay, I just wanted to be sure
16 everybody was aware of that.

17 Okay, so I guess what I would ask is that counsel file
18 a status letter with the Court by 5 p.m. Tuesday, May 27th,
19 that's two weeks before the hearing, regarding the status of
20 the matter. I mean, if the status is, you're still talking,
21 you'll indicate that as well. But -- and if you're still
22 talking but it's -- and you're going to continue talking but
23 it's still unresolved, then I want another status letter a week
24 after that. I want to know -- I definitely want to know a week
25 before the hearing whether this is going to be resolved

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1 consensually or not. But let me ask you for two weeks before,
2 a status letter, and then again, if necessary, a week before
3 the hearing. Okay.

4 MR. MANNAL: Absolutely, Your Honor. Thank you.

5 THE COURT: All right. Thanks very much.

6 MR. COLLIER: Would you like a copy of the letter to
7 the state court judge, Your Honor?

8 THE COURT: Sure. Why don't you forward a copy. That
9 would be -- I'd appreciate that. Thanks very much.

10 Okay, Mr. Rosenbaum? Mr. Mannal --

11 MR. MANNAL: May we be excused?

12 THE COURT: Absolutely.

13 MR. MANNAL: Thank you.

14 THE COURT: Sure.

15 MR. ROSENBAUM: Your Honor, the next matter on the
16 agenda is Roman numeral II. It's the debtors' continued
17 thirtieth omnibus objection. And I'd turn the podium over to
18 my colleague, Meryl Rothchild.

19 THE COURT: Sure.

20 MS. ROTHCHILD: Good morning, Your Honor. Meryl
21 Rothchild of Morrison & Forester on behalf of the ResCap
22 Borrower Claims Trust.

23 The next matter on the agenda, I believe, is on page 8
24 at number 2, the Borrower Trust's fifty-ninth omnibus claims
25 objection to insufficient documentation borrower claims, filed

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1 at docket number 6448. The Borrower Trust filed a related
2 reply in support of the objection at docket number 6797 as to
3 claim number 4419 filed by Ms. Annie Trammell. Ms. Trammell,
4 acting pro se --

5 THE COURT: Let me ask --

6 MS. ROTHCHILD: Oh, sure.

7 THE COURT: -- is Ms. Trammell on the phone, by any
8 chance?

9 All right, no appearance -- no one in the court or by
10 telephone appearing on behalf of Ms. Trammell.

11 Go ahead, Ms. Rothchild.

12 MS. ROTHCHILD: Okay. So Ms. Trammell filed her
13 response to the objection at docket number 6692. In support of
14 the objection and reply, the Borrower Trust also submitted a
15 supplemental declaration by Deanna Horst, chief claims officer
16 of the ResCap Liquidating Trust, as Exhibit 1 to the reply. I
17 believe Ms. Horst has made a telephonic appearance and is
18 available to answer any questions.

19 THE COURT: Okay.

20 MS. ROTHCHILD: Your Honor, we can proceed however the
21 Court prefers. The trust can state its arguments in favor of
22 the objection as to Ms. Trammell's claim, or we can answer any
23 questions the Court may have.

24 THE COURT: All right. Since Ms. Trammell hasn't
25 appeared, the Court has reviewed the objection and the response

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1 to the objection. And as indicated, this is claim 4419. The
2 objection is at ECF 6692 -- or the opposition to the objection
3 is at 6692. The objection is at 6448 and is supported by the
4 declaration of Deanna Horst and Mr. Rosenbaum. Those are both
5 exhibits to the objection. The trust filed a reply which is at
6 6797.

7 The Trammell claim attaches only sparse and unhelpful
8 documentation. The Court has concluded that based on the proof
9 of claim and its documentation, the claim is not entitled to be
10 treated as prima facie evidence of validity and amount. The
11 claim asserts -- it asserts a claim for an 80,000-dollar
12 secured claim against GMAC for "mortgage payments (GMAC)".

13 The trust has treated the claim as one stated against
14 GMAC Mortgage LLC, and argues that the claim lacks adequate
15 documentation. With respect to the requirement for adequate
16 documentation, see *In re Consolidated Pioneer*, 178 B.R. --
17 that's *In re Consolidated Pioneer Mortgage*, 178 B.R. 222. And
18 see also my opinion in *In re Minbatiwalla*, 424 B.R. 104.

19 Trammell's opposition attaches a letter from Ocwen.
20 And in her response, Trammell writes that she objects to the
21 disallowance because she has "an outstanding debt of
22 approximately 80,000 dollars." And her account was transferred
23 to Ocwen. It was transferred to Ocwen as part of the sale of
24 the servicing platform.

25 In the reply the trust states that it has reviewed the

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1 debtors' books and records to examine the history of the
2 debtors' relationship with Trammell. The trust learned that
3 the debtor Homecomings Financial LLC serviced Trammell's loan
4 from 2001 until 2009, when it transferred servicing to GMAC-M.
5 That's in the supplemental declaration at paragraph 5.

6 GMAC-M then serviced the loan until transferring the
7 servicing rights to Ocwen in February 2013. And while
8 servicing the loan, GMAC-M sent Trammell several notices
9 indicating that she was delinquent on her loan payments. But
10 GMAC-M never commenced foreclosure proceedings.

11 The Court concludes, based on the evidence that the
12 trust has submitted, that Trammell has failed to establish a
13 basis for her claim. The claim itself, what's attached, is not
14 entitled to be treated as prima facie evidence of validity and
15 amount. She has not countered the evidence that the trust has
16 put forward in support of the objection and in the reply.

17 Consequently the objection to Trammell proof of claim
18 number 4419 is sustained, and the claim is expunged.

19 MS. ROTHCHILD: Thank you, Your Honor. And we will
20 submit an order to the court to that effect.

21 THE COURT: All right.

22 MR. ROSENBAUM: Your Honor, Norm Rosenbaum, Morrison &
23 Foerster, again. Your Honor, there is -- the remaining items
24 on the calendar are two status conferences in the Hawthorne
25 adversary proceeding and the Von Brincken.

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1 THE COURT: Okay. Is anybody -- well, go ahead, Mr.
2 Rosenbaum.

3 MR. ROSENBAUM: It says that it -- maybe I'll get it
4 right this time. It's page 9, Roman numeral III of the agenda.

5 THE COURT: Okay.

6 MR. ROSENBAUM: I believe --

7 THE COURT: Is anybody on the phone for Hawthorne? Is
8 anybody appearing --

9 MS. HAWTHORNE: Yes, this is Gwen Hawthorne, sir.

10 THE COURT: Okay. Thank you, Ms. Hawthorne.

11 I read -- I saw your status letters with respect to
12 both Hawthorne and Von Brincken. So I've reviewed that. So go
13 ahead Mr. Rosenbaum. And then I'll give Ms. Hawthorne a chance
14 to respond.

15 MR. ROSENBAUM: Thank you, Your Honor. As indicated
16 in the status report, Your Honor was concerned at the last
17 status conference we had on this matter in February that the
18 loan modification application make its way to Ocwen. And we
19 agreed to do everything we could to facilitate that. We did
20 pass on the application that was received by Morrison &
21 Foerster to Ocwen's counsel, who has joined the hearing today,
22 at our request. That's Matt Brooks of Troutman Sanders.

23 THE COURT: Okay.

24 MR. ROSENBAUM: My understanding is that the
25 application was routed to Ocwen by Mr. Brooks on March 8th.

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1 THE COURT: Let me just stop -- Mr. Brooks, are you on
2 the phone?

3 MR. BROOKS: I am, Your Honor.

4 THE COURT: Okay, go ahead, Mr. Rosenbaum.

5 MR. ROSENBAUM: It's our understanding -- but Ms.
6 Hawthorne and Mr. Brooks are on the phone and they can
7 elaborate -- it's our understanding that this application, in
8 effect, asks for a short -- request for a short sale, not a
9 loan modification. In early April, April 3rd, I believe, Mr.
10 Brooks responded to Ms. Hawthorne and her son, indicating what
11 items were missing from the application for the short sale and
12 inquiring again as to whether she, in fact, would still want to
13 be considered for a loan modification.

14 My understanding -- our understanding is, there has
15 yet to be a response from the Hawthornes.

16 THE COURT: Okay.

17 MR. ROSENBAUM: From the perspective of the
18 liquidating trust, we're happy to continue to try to facilitate
19 this, if this can resolve the matter. And if there is to be a
20 further continuance, that's fine from the trust's perspective.
21 But if not, at some point we'll want to move with a dismissal
22 of the complaint.

23 THE COURT: So, Mr. Brooks, maybe you could tell me
24 from Ocwen's standpoint, where things stand?

25 MR. BROOKS: I'd be happy to, Judge. It's -- Ocwen

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1 mailed out a letter to Ms. Hawthorne around the same time I
2 sent my e-mail, April 3rd, indicating that some additional
3 documents would be necessary. And I don't know -- I don't
4 think the status report detailed what those items were, but
5 it's a few documents confirming pay that -- an income that was
6 indicated in the loan modification, as well as a sale contract
7 that has allegedly been entered into.

8 And I followed up with Ms. Hawthorne and left her a
9 voice mail on April the 10th to see if she had any questions
10 about either Ocwen's letter or my e-mail outlining what
11 documents would be needed. And as of yet, I haven't heard
12 anything. And I confirmed with Ocwen yesterday, that Ms.
13 Hawthorne has not submitted any of the additional documents
14 that it requested.

15 THE COURT: Okay. Ms. Hawthorne?

16 MS. HAWTHORNE: Yes, Your Honor, I actually apologize.
17 I've been in the hospital and trying to recover, so I wasn't
18 able to probably get all of that information. It's probably
19 why he didn't hear from me, because I didn't know I received
20 it.

21 THE COURT: Let me ask you, do you have a contract for
22 a proposed short sale of the property?

23 MS. HAWTHORNE: We have an offer for the house. Yes
24 we do.

25 THE COURT: Okay. So really, at this point, Ms.

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1 Hawthorne, and I'm sorry if you were ill and in the hospital --

2 MS. HAWTHORNE: Thank you.

3 THE COURT: -- you need to -- if you want to pursue it
4 with Ocwen either to get approval for a short sale or if you
5 still want to seek a loan modification, you need to provide the
6 information that Ocwen's requesting.

7 MS. HAWTHORNE: Absolutely. Absolutely.

8 THE COURT: Okay. What I would like to -- I mean, I
9 want -- I think what I'm going to do, Mr. Rosenbaum, is adjourn
10 the matter. I don't want to see the trust have to go through
11 the expense of preparing a motion to dismiss if there's a
12 consensual resolution that will solve the matter. And
13 certainly from reading the status report and hearing Mr.
14 Brooks, it certainly sounds to me that Ocwen is prepared to
15 consider -- it hasn't made any decision, I understand that --
16 Ocwen is prepared to consider approving a short sale. And Mr.
17 Brooks inquired also whether Ms. Hawthorne was interested,
18 alternatively, in a loan modification.

19 But when will you be able -- do you know what
20 information Ocwen is asking for, Ms. Hawthorne? Do you have
21 the request that Mr. Brooks has forwarded to you?

22 MS. HAWTHORNE: I can probably get the request. I've
23 been back and forth from my sister's house. That's probably
24 why I didn't receive it.

25 THE COURT: Okay, well me -- Mr. Brooks --

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1 MS. HAWTHORNE: So --

2 THE COURT: -- can you send -- do you have her -- Ms.
3 Hawthorne, do you have e-mail?

4 MS. HAWTHORNE: I do. I have e-mail.

5 THE COURT: Okay. Mr. Brooks do you have her e-mail
6 address?

7 MR. BROOKS: I do, Judge.

8 THE COURT: Okay. Could you -- may I ask you to do
9 this? Could you just, so that -- it sounds as if Ms. Hawthorne
10 doesn't have it immediately at hand. If you would forward the
11 request. And you really -- it's one of these things. Whenever
12 you seek either a modification or approval for a short sale,
13 it's important that you respond quickly, Ms. Hawthorne, because
14 you run the risk that the information you've provided to Ocwen
15 becomes stale, and the result is that they need more
16 information from you.

17 So to try to and move this along --

18 MS. HAWTHORNE: Okay.

19 THE COURT: -- it's important that you really respond
20 promptly. Are you able to do that, Ms. Hawthorne?

21 MS. HAWTHORNE: I am. Definitely, Your Honor.

22 THE COURT: Okay, Mr. Brooks --

23 MS. HAWTHORNE: I'm a lot better, Your Honor. But if
24 he could e-mail that -- forward that by e-mail, I'll respond
25 ASAP.

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1 THE COURT: Mr. Brooks, may I ask you to do that?

2 MR. BROOKS: I will, Judge. And you raised a good
3 point. Ocwen told me yesterday that the current information in
4 Ms. Hawthorne's loan modification request is going to get stale
5 at the end of this week.

6 THE COURT: Okay.

7 MR. BROOKS: And so if Ms. Hawthorne has the
8 information available that she can send today or tomorrow, I
9 can prevent that from happening. But if we move into next
10 week, then I'm going to need some more information.

11 THE COURT: Okay. That's true for both a short sale
12 or a modification, or --

13 MR. BROOKS: That's right. For both, Judge.

14 THE COURT: Okay. So, Ms. Hawthorne, let me say, I
15 mean, because of my experience as a judge with loan
16 modifications, I certainly -- I don't think that was intended
17 as a threat. I mean, all loan servicers' information has to
18 be -- is required to be current for them to consider either a
19 short sale or a loan modification. So it really is important
20 that you get Mr. Brooks the information that he's asking for.
21 Otherwise, the result is you've got to go back and do it again.

22 MS. HAWTHORNE: Your Honor, this is like every two
23 years we're doing this. So I understand the urgency. Yes.

24 THE COURT: Okay. So do it as quickly as you can.

25 MS. HAWTHORNE: Okay.

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1 THE COURT: Okay.

2 MS. HAWTHORNE: Thank you.

3 THE COURT: Mr. Rosenbaum, I guess I would ask this of
4 you or one of your colleagues. If -- keep tabs on this for the
5 next couple of weeks. If there isn't a resolution, you can go
6 ahead with a motion to dismiss. I'm trying to save the trust
7 from having to go through the expense, if it really is -- if a
8 resolution is possible consensually. Okay?

9 MR. ROSENBAUM: We're happy to do that, Your Honor.
10 Thank you.

11 THE COURT: Thanks very much. Okay.

12 Now, Von Brincken? Thank -- Ms. Hawthorne, you're
13 certainly excused.

14 MS. HAWTHORNE: Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. ROSENBAUM: Your Honor, the next matter and final
17 matter on the agenda is at page 10. It's the pre-trial status
18 conference on Von Brincken v. GMAC Mortgage. That's adversary
19 proceeding number 13-1436. I believe earlier I heard Ms. Von
20 Brincken had made an appearance.

21 THE COURT: Ms. Von Brincken, are you on the phone?

22 MS. VON BRINCKEN: Yes, Your Honor. John and Shelley
23 are on -- Von Brincken --

24 THE COURT: Okay.

25 MS. VON BRINCKEN: -- are on the phone.

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1 THE COURT: All right. I'll give you -- I'll have Mr.
2 Rosenbaum speak to it, and then I'll give you a chance to talk.
3 Okay?

4 MS. VON BRINCKEN: Thank you.

5 THE COURT: All right, go ahead.

6 MR. ROSENBAUM: Your Honor --

7 MR. KORNBERG: Your Honor, Bernard Kornberg for Ocwen.

8 THE COURT: Okay. Thank you.

9 MR. ROSENBAUM: Your Honor, in brief, Your Honor did
10 grant the Von Brinckens' -- or Ms. Von Brincken's motion to
11 amend the complaint and filed an amended complaint. We had --
12 that had been preceded by unsuccessful settlement discussions.

13 We did file the joint report on the 17th, I believe,
14 Your Honor. And then on the 18th we received a settlement
15 proposal from Ms. Von Brincken. We have not had an opportunity
16 to fully vet that. And that is something, actually, I would
17 need to raise with the Borrowers' Trust.

18 THE COURT: Yes.

19 MR. ROSENBAUM: We would like an opportunity to do so.
20 And if we're unable to come to a resolution, my proposal would
21 be to enter into just a joint scheduling stipulation on a
22 motion to dismiss with the plaintiff, and we could present that
23 to Your Honor.

24 THE COURT: Okay. That sounds -- well, let me ask,
25 Ms. Von Brincken, do you want to say something new?

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1 MS. VON BRINCKEN: I'm going to defer to my husband.
2 I have a cold.

3 THE COURT: Okay.

4 MS. VON BRINCKEN: Okay?

5 THE COURT: Mr. Von Brincken?

6 MR. VON BRINCKEN: Yes, good morning. John Von
7 Brincken here. Yeah, that's fine. We do want them to take a
8 look at what we have submitted as a settlement offer. And if,
9 in fact, it's not satisfactory and we can't reach a point, then
10 we know that they've already advised that they would possibly
11 send a motion to dismiss. And then we would obviously answer
12 that and continue on.

13 THE COURT: Okay. Mr. Rosenbaum, how much time do you
14 think you need to explore the settlement opportunity?

15 MR. ROSENBAUM: I think two weeks, Your Honor.

16 THE COURT: Okay. So why don't you do this. I'd ask
17 for a status report by Monday, May 12th at 5 o'clock. And if
18 you're not able to reach a settlement, you ought to see if you
19 can agree on a schedule for briefing a motion to dismiss.
20 Okay?

21 MR. ROSENBAUM: That's fine, Your Honor.

22 THE COURT: All right. Mr. Von Brincken, so you ought
23 to -- I'll leave it to the two of you and Mr. Rosenbaum or his
24 colleagues to see whether you can pursue the settlement issue.
25 And if that's not going to work, they're going to go ahead and

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27

1 file a motion to dismiss. You'll have an opportunity to
2 respond to it. And we'll have a hearing.

3 Where do you live?

4 MR. VON BRINCKEN: We're in Grass Valley, California.

5 THE COURT: Okay. I'll permit you to -- just so it's
6 clear, I'll permit you to appear at any hearing on a motion to
7 dismiss by telephone. Okay?

8 MR. VON BRINCKEN: Thank you.

9 THE COURT: All right.

10 MR. ROSENBAUM: Thank you, Your Honor. That concludes
11 our agenda.

12 THE COURT: Okay. Thanks very much, Mr. Rosenbaum.

13 MR. ROSENBAUM: You're welcome.

14 MR. VON BRINCKEN: Thank you.

15 THE COURT: Thank you. All right, we're adjourned.

16 (Whereupon these proceedings were concluded at 10:47 AM)

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